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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1063 80

LA SOCIETE FRANCAISE DE BIENFAISANCE MUTUELLE (a corporation),

Petitioner,

vs.

CALIFORNIA EMPLOYMENT COMMISSION (formerly known as Unemployment Reserves Commission),

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT, DIVISION ONE

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

I

OPINION OF THE STATE COURT

The opinion of the District Court of Appeal is reported in 56 A.C.A. 593, and 133 Pac. (2d) 47,

and appears in the record. (R. 48-67.) On March 8, 1943, the Supreme Court denied without opinion petitioner's application for a hearing. (R. 68.)

II

JURISDICTION

The judgment of the District Court of Appeal sought to be reviewed was entered January 8, 1943. (R. 67.) It became final February 7, 1943. (Cal. Const. Art. VI, Sec. 4(c).) The time within which the State Supreme Court could hear and determine said matter expired March 9, 1943. The petition was filed on June 3, 1943. Jurisdiction was invoked under Sec. 237(b) of the Judicial Code.

III

STATEMENT OF THE STATUTES INVOLVED

The pertinent portions of the California Unemployment Insurance Act (Chapter 352, Stats. of 1935, as amended) are set forth in the Appendix hereto.

IV

STATEMENT OF THE CASE

The statement of facts presented by the petitioner is substantially correct. However, these additional points should be noted. Sections 37, 38, and 44[1] of the California Unemployment Insurance Act (Stats. of 1935, Chapter 352, as amended), impose compulsory contributions on "employers" and their work-

[1] These sections are set forth in the Appendix to this brief.

ers based upon wages paid and received for "employment." Section 6.5 defines "employment" generally as services performed for wages or under any contract of hire.[1] Section 7 specifically excludes from the term "employment" certain types of service. The exclusion involved in this act is found in Section 7(g) which reads as follows:

> "Sec. 7. The term 'employment' does not include:
>
> * * * * *
>
> (g) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;"

The petitioner claiming to come within the provisions of said Section 7(g) paid under protest various sums of contributions aggregating $36,045.84, to the respondent, a state-wide administrative agency created by and exercising the powers conferred upon it by the California Unemployment Insurance Act.

Section 7(g) is, with a minor exception not material here, virtually identical in content with Sections 811(b)(8) and 907(c)(7) of the Federal Social Security Act (now Sections 1426(b)(8) and 1607(c)(7) of the Internal Revenue Code). The California Unemployment Insurance Act was ap-

[1] These sections are set forth in the Appendix to this brief.

proved by the Governor on June 25, 1935, and the Federal Social Security Act was approved August 14, 1935.

In 1939 the Commissioner of Internal Revenue advised petitioner that its former exemption from income tax under Section 101(6) of the Revenue Act of 1936 was revoked, but that it was entitled to exemption under Section 101(8) of the Revenue Act of 1938 relating to civic leagues and local associations of employees. (R. 32, 33.) In a letter dated April 3, 1939, the Commissioner of Internal Revenue revoked the exemption from social security taxes previously accorded petitioner by former letters of the Commissioner. (R. 34, 35.)

V
ARGUMENT

SUMMARY OF ARGUMENT

Point A. Jurisdiction of this matter does not exist under Section 237(b) of the Judicial Code since the decision of the State court did not involve the construction of a Federal statute.

Point B. The District Court of Appeal of the State of California did not err in holding that a nonprofit hospital was not charitable per se within the meaning of Section 7(g) of the Unemployment Insurance Act.

Point A. Jurisdiction of This Matter Does Not Exist Under Section 237(b) of the Judicial Code Since the Decision of the State Court Did Not Involve the Construction of a Federal Statute

A review by writ of certiorari is not a matter of right but of sound judicial discretion and will be

granted only where there are special and important reasons therefor. In this matter the State court did not decide a Federal question of substance, but decided that under Section 7(g) of the California Unemployment Insurance Act the petitioner herein was not organized and operated exclusively for charitable, scientific and educational purposes, no part of the net earnings of which inured to the benefit of any private member or individual.

The necessary prerequisite for a review by certiorari is exemplification of a Federal question that was affirmatively presented, that its decision was necessary to the determination of the cause, that it was actually decided or that the judgment as rendered could not have been so without deciding it.

Adams v. *Russell,* 229 U. S. 353, 33 S. Ct. 846, 57 L. Ed. 1224;

Southwestern Bell Telephone Co. v. *Oklahoma,* 303 U. S. 206, 212, 82 L. Ed. 751;

Palmer v. *State of Ohio,* 248 U. S. 32, 39 S. Ct. 16, 63 L. Ed. 108;

Chicago R. I. & P. R. Co. v. *Maucher,* 248 U. S. 359, 39 S. Ct. 108, 63 L. Ed. 294;

Whitney v. *California,* 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095.

In this action, it is apparent that a decision made by the District Court of Appeal of the State of California as to the petitioner's liability under the California Unemployment Insurance Act could and would have no effect upon petitioner's status under the Federal Social Security Act. Therefore, no

construction of the Federal statute could be involved nor did the District Court evade its determination. As stated in *Vandalia Railroad Company* v. *Indiana, ex rel. The City of South Bend,* 207 U. S. 359, 52 L. Ed. 246:

> "Doubtless this court is not concluded by the ruling of the state court, and must determine for itself whether there is really involved any Federal question which will entitle it to review the judgment. *Newport Light Company* v. *Newport,* 151 U. S. 527, 536, and cases cited in the opinion. A case may arise in which it is apparent that a Federal question is sought to be avoided or is avoided by giving an unreasonable construction to pleadings, but that is not this case. Even if it be conceded that the conclusion of the Supreme Court of the State is not free from doubt, there is nothing to justify a suspicion that there was any intent to avoid the Federal questions. The construction placed by that court upon the pleading was a reasonable one."

The question of whether or not the petitioner was entitled to exemption under Section 7(g) of the Unemployment Insurance Act, respondent submits is a local question. A decision upon this ground by the State court supports the judgment and leaves no Federal question open for the determination of the Supreme Court, thus the writ of certiorari should not issue.

> *Murdock* v. *Memphis,* 20 Wall. 590, 634-636, 22 L. Ed. 429, 443, 444;

Live Oak Water Users' Assoc. v. *Railroad Commission,* 269 U. S. 354, 359, 70 L. Ed. 305;

Richardson Mach. Co. v. *Scott,* 276 U. S. 128, 72 L. Ed. 497.

This court has recognized that the Federal Social Security Act does not inhibit the power of the State to legislate freely and to administer its own acts.

Steward Machine Co. v. *Davis,* 301 U. S. 548, 57 S. Ct. 883, 81 L. Ed. 1279;

Standard Dredging Corp. v. *Murphy,* 63 Sup. Ct. 1067, 87 L. Ed. 1017.

The fact that unemployment relief was sought to be alleviated upon a nationwide basis under a Federal-State plan of unemployment insurance does not destroy the separate and distinct character of State legislation in this field.

Shore Fisheries Inc. v. *Board of Review* (N. J. 1941), 21 Atl. 2d 634;

Buckstaff Bath House v. *McKinley* (1939), 308 U. S. 358, 84 L. Ed. 322.

It is well settled that the State may determine what shall constitute employment subject to taxation without regard to existing definitions or categories and is not required to conform in every respect to the national thought upon the subject as expressed in the acts of Congress.

Unemployment Comp. Comm. v. *National Life Insurance Co.,* 219 N. C. 576, 14 S.E. 2d 689;

Brannaman v. *Richlow Manufacturing Co.,* 106 Colo. 317, 104 Pac. 2d 897;

Equitable Life Ins. Co. v. *Iowa Unem. Security Comm.*, 2 N. W. 2d 262, 265;
Standard Dredging Corp. v. *Murphy*, 63 Sup. Ct. 1067, 87 L. Ed. 1017.

Thus, the judgment here in question had to do exclusively with the interpretation of the State statute and insofar as the Federal Social Security Act was concerned, its interpretation was not challenged but on the contrary the result reached by the California courts was in accord with the results reached by the Federal courts on cases involving similar facts.

Smith v. *Reynolds*, 43 Fed. Supp. 510;
Hassett v. *Associated Hospital Service Corp. of Mass.*, 125 Fed. 2d 611.

Point B. The District Court of Appeal of the State of California Did Not Err in Holding That a Non-Profit Hospital Was Not Charitable Per Se Within the Meaning of Section 7(g) of the Unemployment Insurance Act

Under the California Unemployment Insurance Act as interpreted by the California courts a person claiming exemption from the taxing provisions under Section 7(g) thereof must meet the statutory requirements for exemption which are three in number (1) That it was organized exclusively for charitable purposes; (2) That it was and is operated exclusively for charitable purposes; (3) That no

part of its net earnings inures to the benefit of any private shareholder or individual.

California Employment Commission v. *Bethesda Foundation*, 54 Cal. App. 2d 348, 128 Pac. 2d 874.

The fact that a hospital corporation was organized under a statute relating to benevolent, charitable or educational corporations is not of itself governing.

California Employment Commission v. *Bethesda Foundation*, 54 Cal. App. 2d 348, 128 Pac. 2d 874;
In re Dol's Estate, 182 Cal. 159, 187 Pac. 428;
Brown v. *La Societe Francaise*, 138 Cal. 475, 71 Pac. 516.

To the same effect see

Fleming Hospital, Inc. v. *Williams* (Texas), 169 S.W. 2d 241.

That petitioner herein is not a charitable corporation within the meaning of Section 7(g) of the California Act is supported by a long line of authorities.

Brown v. *La Societe Francaise*, 138 Cal. 475, 71 Pac. 516;
In re Dol's Estate, 182 Cal. 159, 187 Pac. 428;
Smith v. *Reynolds*, 43 Fed. Supp. 510;
Hassett v. *Associated Hospital Service Corp. of Mass.*, 125 Fed. 2d 611;
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In re Kennedy's Estate, 269 N. Y. S. 136;

19 R. C. L. 1182, Sec. 5;

14 Corp. Jur. Sec. 420;

Zollman, American Law of Charities, 143, 144;

Mutual Aid and Benefit Ass'n., etc. v. *Commissioner*, 17 B.T.A. 967;

Employees Benefit Ass'n., etc. v. *Commissioner*, 14 B.T.A. 1166;

Pontiac Employees Mutual Benefit Ass'n. v. *Commissioner*, 15 B.T.A. 74.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in

this court, and that the petition for a writ of certiorari should be denied.

DATED: This 9th day of July, 1943.

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